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N. J. Court of Errors and Appeals.

ELISHA RUCKMAN, *vs.* *STEPHEN B. RANSOM.*	In Error,

Circuit Record.

[Filed June 7, 1870.]

Hudson county, *ss.*—Elisha Ruckman, the defendant in this suit, was summoned to answer Stephen B. Ransom, the plaintiff therein, of a plea that the said defendant, render to the said plaintiff the sum of five thousand seventy-four dollars and thirteen cents, which the said defendant owes to and unjustly detains from the said plaintiff. And thereupon the said plaintiff by John A. Blair, his attorney, complains: For that, whereas, certain differences having arisen and being 10 depending between the said plaintiff and the said defendant, they, the said plaintiff and the said defendant, heretofore, to wit, on the thirteenth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, to wit, at the city of Hudson, in the county of Hudson, and within the jurisdiction of this court, by certain articles of agreement then and there made, concluded, and agreed upon between the said plaintiff of the one part, and the said defendant of the other part, one part of which said articles of agreement, sealed with the seal of the said defendant, the said plaintiff 20 now brings here into court, the date whereof is the same day and year aforesaid, after reciting that a controversy was then pending between the said defendant and the said plaintiff, a counsellor-at-law of the state of New Jersey, in relation to the amount of counsel fees to be paid by the said defendant,

to the said plaintiff for his labor and services as a counsellor-at-law, in conducting a large number of suits at law and in equity in the various courts of the state of New Jersey, and for advice concerning the same, and concerning the business generally of said Elisha Ruckman, for a period embracing several years prior to the date thereof in his capacity of counsellor-at-law and legal advisor of said defendant, it was agreed by and between the said parties to submit, and they did thereby submit the said controversy, and all matters
10 therewith connected, to the arbitrament of the Honorable Joel Parker, of Freehold, in the county of Monmouth, and state of New Jersey, both as to the amount of said counsel fees, for the conducting of the said suits in the various courts of law and of chancery of this state, and for advice pertaining to said matters of law and of equity, and for disbursements and expenses laid out in conducting and carrying on the same matters, and for attorney's fees connected therewith, and of all matters of account between the said parties, up to the date of the said agreement, to be audited and adjusted
20 by the said Joel Parker, as such arbitrator between the said parties as aforesaid. And it was further by the said agreement mutually agreed and covenanted by and between the said parties, that the award to be made by the said arbitrator should in all things, by them and each of them, be well and faithfully kept and observed, provided that said award should be made in writing, under the hand of the said Joel Parker, and ready to be delivered to the said parties, or such one of them as should desire; and it was further by the said agreement agreed by and between the said parties,
30 that the expenses of the said arbitration should be borne equally between them, share and share alike, as by the said article of agreement, a copy of which is hereto annexed and made part of this declaration, reference being thereto had will more fully appear; and said plaintiff further saith, that the said Joel Parker having taken upon himself the burden of the said arbitration, and having been first duly sworn according to the provisions of the statute in such case made and provided, did, in due manner, within a reasonable time after the making of the said agreement, to wit, on the first
40 day of January, in the year of our Lord one thousand eight

hundred and seventy, to wit, at the city of Hudson aforesaid, did duly make and publish his award in writing, subscribed with his own proper hand, and sealed with his seal, of and concerning the said matters in difference between the said parties, ready to be delivered to the said parties or such of them as should demand the same, bearing date, to wit, the day and year last aforesaid; and did thereby award and direct that the said defendant should pay to the said plaintiff on or before the third Tuesday of February then next, which period has now elapsed, the sum of five thousand and eleven dollars 10 and thirteen cents, and that the said sum should be in full satisfaction and discharge of the counsel fees, labor, and services of the said plaintiff as counsellor-at-law, in conducting suits at law and in equity in the various courts of the state of New Jersey for the said Elisha Ruckman, and for advice concerning the same, and concerning the business generally of the said Elisha Ruckman, prior to the date of the said submission, in his capacity of counsellor-at-law and legal adviser of the said defendant, and of his disbursements and expenses paid by the said Stephen B. Ransom, in con- 20 ducting and carrying on the said suits, and matters of the said Elisha Ruckman, and all attorney's fees connected with the said matters, and all matters of account between the said parties, up to the date of the said submission; and the said Joel Parker did thereby further award that the said plaintiff having incurred and paid the sum of one hundred and twenty-six dollars for the services and fees of the said arbitrator, and for the legal fees of witnesses produced and sworn before the said arbritrator, that said defendant should pay to the said plaintiff the sum of sixty-three dollars, the one-half part 30 thereof, on demand, as by the said award, a copy of which is hereto annexed and made part of this declaration, reference being thereto had, will more fully and at large appear, of which said award the said defendant afterwards, to wit, on the day and year last aforesaid, to wit, at the city of Hudson aforesaid, had notice; yet the said defendant did not, on the said day in the said award in that behalf mentioned, or at any other time before or since that day, pay to the said plaintiff the said sum of five thousand and eleven dollars and thirteen cents in the said award mentioned, or any part thereof, al- 40

though often requested so to do, and has not paid to the said plaintiff the said sum of sixty-three dollars in the said award mentioned or any part thereof, although often requested so to do, to wit, at the city of Hudson aforesaid; whereby an action hath occurred to the said plaintiff to demand and have of and from the said defendant the said sums of five thousand and eleven dollars and thirteen cents, and sixty-three dollars, making together the sum of five thousand and seventy-four dollars and thirteen cents, the sum first above
10 demanded, yet the said defendant, although often requested so to do, hath not as yet paid the said sum of five thousand and seventy-four dollars and thirteen cents, or any part thereof, to the said plaintiff; but he to do this hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of five thousand dollars; and therefore he brings his suit.

COPY OF ARTICLE OF SUBMISSION REFERRED TO IN THE FOREGOING DECLARATION, AND MADE PART THEREOF.

Whereas, a controversy is now pending between Elisha
20 Ruckman, of the county of Bergen, and state of New Jersey, gentleman, and Stephen B. Ransom, a counsellor-at-law of the state of New Jersey, resident of Jersey City, in the county of Hudson, and state aforesaid, in relation to the amount of counsel fees to be paid by the said Elisha Ruckman to the said Stephen B. Ransom for his labor and services as counsellor-at-law in conducting a large number of suits at law and in equity, in the various courts of the state of New Jersey, and for advice concerning the same, and concerning the business generally of the said Elisha Ruckman,
30 for a period embracing several years prior to the date of the presents, in his capacity of counsellor-at-law and legal adviser of said Elisha Ruckman: now, therefore, the undersigned, Elisha Ruckman and Stephen B. Ransom aforesaid, do hereby, submit the said controversy and all matters therewith connected to the arbitrament of the Honorable Joel Parker, of Freehold, in the county of Monmouth, and state of New Jersey, both as to the amount of said counsel fees for the conducting of the said suits in the various courts of law and of chancery of this state, and for advice pertain-

ing to said matters of law and of equity, and for disbursements and expenses laid out in conducting and carrying on the same matters, and for attorney's fees connected therewith, and of all matters of account between the said parties, up to the date of these presents, to be audited and adjusted by the said Joel Parker, as such arbitrator between the said parties as aforesaid; and we do mutually agree and covenant to and with each other that the award to be made by the said arbitrator, shall in all things, by us and each of us, be well and faithfully kept and observed, provided, however, that the 10 said award be made in writing, under the hand of the said Joel Parker, and ready to be delivered to the said parties, or such one of them as shall desire it, by the first day of next. And it is further agreed by and between the said parties that the expenses of the said arbitration shall be borne equally between them, share and share alike; and it is hereby further agreed by and between the said parties that judgment in pursuance of the award so rendered may be entered in the Supreme Court of the state of New Jersey, to the end that all matters now in controversy between them in that behalf shall be finally determined. 20

Witness our hand and seals, this thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

ELISHA RUCKMAN. [L. S.]
S. B. RANSOM. [L. S.]

Signed, sealed, and delivered in the presence of
J. FLAVEL McGEE.

[5 cent Revenue Stamp.]

COPY OF AWARD REFERRED TO IN THE FOREGOING DECLARATION, AND MADE PART THEREOF. 30

Award between Stephen B. Ransom and Elisha Ruckman, made the first day of January, in the year of our Lord one thousand eight hundred and seventy (1870).

The said Stephen B. Ransom and Elisha Ruckman having by their agreement, made under their respective hands and seals, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, mutually

agree to submit certain matters in difference between them, specified in the said submission, to the award and final determination of the subscriber, Joel Parker, an arbitrator by them chosen and agreed upon, and I, the said Joel Parker, arbitrator as aforesaid, having fixed Tuesday, the thirtieth day of November, in the year or our Lord one thousand eight hundred and sixty-nine, at the hour of ten in the forenoon of that day, at Freehold, in the county of Monmouth, as the time and place for hearing the said matters before me,
10 the said Stephen B. Ransom, at the time and place so fixed, appeared before me, and I, having been first duly sworn faithfully and fairly to hear and examine the cause in question, between the said parties, and make a just and true report according to the best of my skill and understanding, did, at the said time and place so fixed as aforesaid, proceed to the hearing of the said matters, so submitted to me as aforesaid, and the said Elisha Ruckman not appearing before me, at the time and place so fixed as aforesaid, proof was made before me, that written notice of the said meeting, and
20 of the time and place of the said meeting, had been served upon the said Elisha Ruckman personally, at least ten days prior to the time of said meeting, and I, having heard the allegations and proof of the said Stephen B. Ransom, the said Elisha Ruckman not appearing as aforesaid, I, Joel Parker, the said arbitrator, do hereby make and publish this my award of and concerning the said matters, to me submitted as aforesaid, as follows:

First—I do award that the said Elisha Ruckman pay to the said Stephen B. Ransom, on or before the third Tuesday of
30 February next, the sum of five thousand and eleven dollars and thirteen cents ($5011.13).

Secondly—I do award that the said sum is in full satisfaction and discharge of the counsel fees, labor, and services of the said Stephen B. Ransom as counsellor-at-law, in conducting suits at law and in equity in the various courts of the state of New Jersey for the said Elisha Ruckman, and for advice concerning the same, and concerning the business generally of the said Elisha Ruckman, prior to the date of the said submission, in his capacity of counsellor-at-law and legal
40 adviser of the said Elisha Ruckman, and of disbursements

and expenses paid by the said Stephen B. Ransom in conducting and carrying on the said suits and matters of the said Elisha Ruckman, and of all attorney's fees connected with the said matters, and of all matters of account between the said parties up to the date of the said submission, and that all actions, suits, controversies, quarrels, and demands whatsoever, relating to the matters aforesaid between them respectively, to the day of the date of the said submission to me as aforesaid, cease and be no further prosecuted.

Thirdly—The said Stephen B. Ransom having incurred and paid the sum of one hundred and twenty-six dollars, for the services and fees of the said arbitrator, and for the legal fees of witnesses produced and sworn before the said arbitrator, I do award that the said Elisha Ruckman do pay to the said Stephen B. Ransom the sum of sixty-three dollars, the one-half part thereof, on demand. 10

In witness whereof, I have hereto set my hand and seal the day and year first above written.

JOEL PARKER. [L. S.]

And the said defendant, by Albert A. Cloke, his attorney, comes and defends the wrong and injury, when, &c., and saith, that he is not indebted to the said plaintiff in manner and form as the said plaintiff hath thereof complained against him, nor any part of the same, and of this he puts himself upon the country; and the said plaintiff doth the like, &c. 20

To Stephen B. Ransom, esq., and J. A. Blair, his attorney.

Take notice that the defendant will give in evidence under the general issue above pleaded, as a defence to said action, the following facts:

First—That shortly after signing the articles of agreement, as set forth in the plaintiff's declaration, the defendant informed the plaintiff that he would not submit to the same, and would not attend before Hon. Joel Parker, mentioned in said articles as arbitrator. 30

Second—That shortly after signing the said articles above mentioned, the said defendant gave written notice to the Hon. Joel Parker to the effect and meaning that he, said defendant, positively revoked the said submission to his arbi-

tration, and would not attend before him, nor abide the award he might make in any controversies; believe him, said plaintiff.

Third—That before the said Hon. Joel Parker proceeded to hear and determine the controversies above mentioned, defendant again sent written notice of his dissent from said arbitrament about to be made, and revoked his said agreement.

Fourth—That the said defendant has fully paid to the
10 said plaintiff all the money that legally was due him.

ALBERT A. CLOKE,
Attorney of plaintiff.

New Jersey, to wit.: I, Charles P. Smith, clerk of the Supreme Court of New Jersey, do hereby certify that the foregoing is a true copy of the pleadings affiled of record in my office in the above stated cause.

Witness my hand and the seal of the said court this second day of May, in the year of our Lord one thousand eight hundred and seventy.

20 [L. S.] CHAS. P. SMITH, *Clerk.*

Afterwards, that is to say, on the sixteenth day of May, in the year of our Lord one thousand eight hundred and seventy, at a Circuit Court held at the city of Jersey City, in the county of Hudson, before Hon. Joseph D. Bedle, one of the Justices of the said Supreme Court, assigned to hold pleas in the county of Hudson aforesaid, according to the form of the statute in such case made and provided, comes as well the within named Stephen B. Ransom, as the within named Elisha Ruckman, by their respective attorneys within named,
30 and the jurors of the jury whereof mention is made within, being summoned, also came, who, to speak the truth of the matter within contained, being chosen, tried, and sworn, as to the first issue within joined between the said parties, say upon their oath, that the said Elisha Ruckman doth owe to the said Stephen B. Ransom, the said sum of five thousand and seventy four dollars and thirteen cents, within demanded in manner and form, as the said Stephen B. Ransom hath above

thereof complained against him; and as to the second issue within joined between the said parties, the jurors aforesaid upon their oath aforesaid say that the said Joel Parker, the arbitrator therein mentioned, did make the said award within mentioned in manner and form as the said Stephen B. Ransom hath within in that behalf alleged.

And they assess the damages of the said Stephen B. Ransom on occasion of the detaining the within debt, over and above his costs and charges by him about his suit in this behalf expended, to one hundred and six dollars, and for those 10 costs and charges at six cents.

J. D. BEDLE,
Justice of the Supreme Court.

Writ of Error.

[Filed November 1, 1870.]

The answer of the Justices of the Supreme Court of New Jersey, within named. The record and proceedings, whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errórs and Appeals in a certain schedule to this writ annexed, as 20 within commanded.

[L. S.] M. BEASLEY, *Chief Justice.*

As yet of the third day of March, A. D. eighteen hundred and seventy.

Witness, M. BEASLEY, ESQ., *Chief Justice.*

CHARLES P. SMITH, *Clerk.*

Hudson county, *ss.*—Elisha Ruckman, the defendant in this suit, was summoned to answer Stephen B. Ransom, the plaintiff therein, of a plea that the said defendant render to the said plaintiff, the sum of five thousand and seventy-four 30 dollars and thirteen cents, which the said defendant owes to, and unjustly detains from the said plaintiff.

And thereupon the said plaintiff, by John A. Blair, his

attorney, complains for that whereas certain differences having arisen, and being depending between the said plaintiff and the said defendant, they, the said plaintiff and the said defendant, heretofore, to wit, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, to wit, at the city of Hudson, in the county of Hudson, and within the jurisdiction of this court, by certain articles of agreement then and there made, concluded, and agreed upon between the said plaintiff of the one part,
10 and the said defendant of the other part, one part of which said articles of agreement, sealed with the seal of the said defendant, the said plaintiff now brings here into court, the date whereof is the same day and year aforesaid, after reciting that a controversy was then pending between the said defendant and the said plaintiff, a counsellor-at-law of the state of New Jersey, in relation to the amount of counsel fees to be paid by the said defendant to the said plaintiff, for his labor and services as a counsellor at-law, in conducting a large number of suits at law and in equity in the
20 various courts of the state of New Jersey, and for advice concerning the business generally of the said Elisha Ruckman, for a period embracing several years prior to the date thereof, in his capacity of counsellor-at-law and legal advisor of the said defendant, it was agreed by and between the said parties to submit, and they did thereby submit the said controversy, and all matters therewith connected, to the arbitrament of the Honorable Joel Parker, of Freehold, in the county of Monmouth, and state of New Jersey, both as to the amount of said counsel fees for the conducting of the said suits,
30 in the various courts of law and of chancery of this state, and for advice pertaining to said matters of law and of equity, and for disbursements and expenses laid out in conducting and carrying on the same matters, and for attorney's fees connected therewith, and of all matters of account between the said parties, up to the date of the said agreement, to be audited and adjusted by the said Joel Parker as such arbitrator between the said parties as aforesaid; and it was further by the said agreement mutually agreed and covenanted by and between the said parties, that the award to be
40 made by the said arbitrator should in all things, by them and

each of them, be well and faithfully kept and observed, provided that said award should be made in writing, under the hand of the said Joel Parker, and ready to be delivered to the said parties, or such one of them as should desire; and it was further by the said agreement agreed by and between the said parties, that the expenses of the said arbitration should be borne equally between them, share and share alike, as by the said article of agreement, a copy of which is hereto annexed and made part of this declaration, reference being thereto had, will more fully appear; and the said 10 plaintiff further saith, that the said Joel Parker having taken upon himself the burden of the said arbitration, and having been first duly sworn according to the provisions of the statute in such case made and provided, did, in due manner, within a reasonable time after the making of the said agreement, to wit, on the first day of January, in the year of our Lord one thousand eight hundred and seventy, to wit, at the city of Hudson aforesaid, duly make and publish his award in writing, subscribed with his own proper hand, and sealed with his seal, of and concerning the said 20 matters in difference between the said parties, or such of them as should demand the same, bearing date, to wit, the day and year last aforesaid, and did thereby award and direct that the said defendant should pay to the said plaintiff on or before the third Tuesday of February then next, which period has now elapsed, the sum of five thousand and eleven dollars and thirteen cents, and that the said sum should be in full satisfaction and discharge of the counsel fees, labor, and services of the said plaintiff as counsellor-at-law in conducting suits at law and in equity in the various 30 courts of the state of New Jersey for the said Elisha Ruckman, and for advice concerning the same, and concerning the business generally of the said Elisha Ruckman prior to the date of the said submission, in his capacity of counsellor-at-law and legal adviser of the said defendant, and of his disbursements and expenses paid by the said Stephen B. Ransom in conducting and carrying on the said suits and matters of the said Elisha Ruckman, and all attorney's fees connected with the said matters, and all matters of account between the said parties, up to the date of the said submis- 40

sion, and the said Joel Parker did thereby further award that the said plaintiff, having incurred and paid the sum of one hundred and twenty-six dollars for the services and fees of the said arbitrator, and for the legal fees of witnesses produced and sworn before the said arbitrator, that said defendant should pay to the said plaintiff the sum of sixty-three dollars, the one half part thereof, on demand, as by the said award, a copy of which is hereto annexed and made part of this declaration, reference being thereto had, will more
10 fully and at large appear, of which said award the said defendant afterwards, to wit, on the day and year last aforesaid, to wit, at the city of Hudson aforesaid, had notice.

Yet the said defendant did not, on the said day in the said award in that behalf mentioned, or at any other time before or since that day, pay to the said plaintiff the said sum of five thousand and eleven dollars and thirteen cents in said award mentioned, nor any part thereof, although often requested so to do, and has not paid to the said plaintiff the said sum of sixty-three dollars in the said award mentioned, or any
20 part thereof, although often requested so to do, to wit, at the city of Hudson aforesaid; whereby an action hath accrued to the said plaintiff to demand and have of and from the said defendant the said sums of five thousand and eleven dollars and thirteen cents, and sixty-three dollars, making together the sum of five thousand and seventy-four dollars and thirteen cents, the sum first above demanded; yet the said defendant, although often requested so to do, hath not as yet paid the said sum of five thousand and seventy-four dollars and thirteen cents, or any part thereof, to the said
30 plaintiff, but he to do this hitherto wholly refused, and still doth refuse, to the damage of the said plaintiff of five thousand dollars, and therefore he brings his suit.

COPY OF ARTICLE OF SUBMISSION REFERRED TO IN THE FOREGOING DECLARATION, AND MADE PART THEREOF.

Whereas, a controversy is now pending between Elisha Ruckman, of the county of Bergen, and state of New Jersey, gentleman, and Stephen B. Ransom, a counsellor-at-law of the state of New Jersey, resident of Jersey City, in the county of Hudson, and state afore said, in relation to the amount of counsel fees to be paid by the said Elisha Ruck-

man to the said Stephen B. Ransom for his labor and services as counsellor-at-law in conducting a large number of suits at law and in equity in the various courts of the state of New Jersey, and for advice concerning the same, and concerning the business generally of the said Elisha Ruckman, for a period embracing several years prior to the date of the presents, in his capacity of counsellor-at-law and legal advisor of said Elisha Ruckman; now, therefore, we the undersigned, Elisha Ruckman and Stephen B. Ransom aforesaid, do hereby submit the said controversy, and all matters 10 therewith connected, to the arbitrament of the Honorable Joel Parker, of Freehold, in the county of Monmouth, and state of New Jersey, both as to the amount of said counsel fees for the conducting of the said suits in the various courts of law and of chancery of this state, and for advice pertaining to said matters of law and of equity, and for disbursements and expenses laid out in conducting and carrying on the same matters, and for attorney's fees connected therewith, and of all matters of account between the said parties, up to the date of these presents, to be audited and adjusted 20 by the said Joel Parker as such arbitrator between the said parties as aforesaid; and we do mutually agree and covenant to and with each other that the award to be made by the said arbitrator shall in all things, by us and each of us, be well and faithfully kept and observed, provided, however, that the said award be made in writing under the hand of the said Joel Parker, and ready to be delivered to the said parties, or such one of them as shall desire it, by the first day of next. And it is further agreed by and between the said parties that the expenses of the said arbi- 30 tration shall be borne equally between them, share and share alike; and it is hereby further agreed by and between the said parties that judgment in pursuance of the award so rendered may be entered in the Supreme Court of the state of New Jersey, to the end that all matters now in controversy between them in that behalf shall be finally determined.

Witness our hands and seals this thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

ELISHA RUCKMAN. [L. S.] 40
S. B. RANSOM. [L. S.]

Signed, sealed, and delivered in the presence of

J. FLAVEL McGEE.

[5 cent Revenue Stamp.]

COPY OF AWARD REFERRED TO IN THE FOREGOING DECLARATION, AND MADE PART THEREOF.

Award between Stephen B. Ransom and Elisha Ruckman, made the first day of January, in the year of our Lord one thousand eight hundred and seventy (1870). The said Stephen B. Ransom and Elisha Ruckman, having by their
10 agreement, made under their respective hands and seals, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, mutually agree to submit certain matters in difference between them, specified in the said submission, to the award and final determination of the subscriber, Joel Parker, an arbitrator by them chosen and agreed upon, and I, the said Joel Parker, arbitrator as aforesaid, having fixed Tuesday, the thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, at the hour of ten in the forenoon of that
20 day, at Freehold, in the county of Monmouth, as the time and place for hearing the said matters before me, the said Stephen B. Ransom, at the time and place so fixed, appeared before me, and I having first been duly sworn faithfully and fairly to hear and examine the cause in question between the said parties, and make a just and true report, according to the best of my skill and understanding, did, at the said time and place so fixed as aforesaid, proceed to the hearing of the said matters so submitted to me as aforesaid; and the said Elisha Ruckman not appearing before me at the time and
30 place so fixed as aforesaid, proof was made before me that written notice of the said meeting and of the time and place of the said meeting had been served upon the said Elisha Ruckman, personally, at least ten days prior to the time of the said meeting; and I having heard the allegations and proof of the said Stephen B. Ransom, the said Elisha Ruckman not appearing as aforesaid, I, Joel Parker, the said arbitrator, do hereby make and publish this my award of and concerning the said matters to me submitted as aforesaid, as follows:

First. I do award that the said Elisha Ruckman pay to the said Stephen B. Ransom, on or before the third Tuesday of February next, the sum of five thousand and eleven dollars and thirteen cents ($5011.13.)

Secondly. I do award that the said sum is in full satisfaction and discharge of the counsel fees, labor, and services of the said Stephen B. Ransom as counsellor-at-law in conducting suits at law and in equity in the various courts of the state of New Jersey for the said Elisha Ruckman, and for advice concerning the same and concerning the business 10 generally of the said Elisha Ruckman, prior to the date of the said submission, in his capacity of counsellor-at-law and legal advisor of the said Elisha Ruckman, and of disbursements and expenses paid by the said Stephen B. Ransom in conducting and carrying on the said suits and matters of the said Elisha Ruckman, and of all attorney's fees connected with the said matters, and of all matters of account between the said parties up, to the date of the said submission; and that all actions, suits, controversies, quarrels, and demands whatsoever relating to the matters aforesaid between 20 them respectively, to the day of the date of the said submission to me as aforesaid, cease and be no further prosecuted.

Thirdly. The said Stephen B. Ransom, having incurred and paid the sum of one hundred and twenty-six dollars for the services and fees of the said arbitrator, and for the legal fees of witnesses produced and sworn before the said arbitrator, I do award that the said Elisha Ruckman do pay to the said Stephen B. Ransom the sum of sixty-three dollars, the one half part thereof, on demand.

In witness whereof, I have hereto set my hand and seal, the 30 day and year first above written.

JOEL PARKER. [L. S.]

And the said defendant, by Albert A. Cloke, his attorney, comes and defends the wrong and injury when, &c., and saith that he is not indebted to the said plaintiff in manner and form as the said plaintiff hath thereof complained against him, nor any part of the same, and of this he puts himself upon the country, and the said plaintiff doth the like, &c.

Therefore, let a jury thereupon come before the Chief

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Justice, or some other justice of the Supreme Court of the
state of New Jersey, at a Circuit Court to be holden at
Jersey City, in and for the county of Hudson, on the sixteenth
day of May, A. D. eighteen hundred and seventy, by
whom, &c. And the same day is given to the parties aforesaid,
there, &c.

And now at this day, to wit, the seventh day of June, in
the year last aforesaid, before the said Supreme Court, at
Trenton, come the parties aforesaid, by their attorneys
10 aforesaid, and the justice before whom, &c., sends here the
record had before him in these words, to wit.:

"Afterwards, that is to say on the sixteenth day of May,
in the year of our Lord one thousand eight hundred and
seventy, at a Circuit Court held at the city of Jersey City, in
the county of Hudson, before the Honorable Joseph D. Bedle,
one of the justices of the said Supreme Court, assigned to
hold pleas in the county of Hudson aforesaid, according to
the form of the statute in such case made and provided,
comes as well the within named Stephen B. Ransom as the
20 within named Elisha Ruckman, by their respective attorneys
within named, and the jurors of the jury whereof mention is
made within, being summoned, also come, who to speak the
truth of the matters within contained being chosen, tried,
and sworn as to the first issue within joined between the
said parties, say upon their oath that the said Elisha Ruckman
doth owe to the said Stephen B. Ransom, the said sum
of five thousand and seventy-four dollars and thirteen cents
within demanded, in manner and form as the said Stephen
B. Ransom hath above thereof complained against him.

30 And as to the second issue within joined between the
said parties, the jurors aforesaid upon their oath aforesaid
say that the said Joel Parker, the arbitrator therein mentioned,
did make the said award within mentioned in manner
and form as the said Stephen B. Ransom hath within
in that behalf alleged. And they assess the damages of the said
Stephen B. Ransom, on occasion of the detaining the within
debt, over and above his costs and charges by him about his
suit in this behalf expended, to one hundred and six dollars;
and for those costs and charges at six cents."

40 Therefore, it is considered that the said Stephen B. Ran-

som do recover against the said Elisha Ruckman his said debt, by the jurors aforesaid in form aforesaid found, to the sum of five thousand and seventy-four dollars and thirteen cents, as also the sum of one hundred and six dollars, for his damages he has sustained by reason of the detention of the aforesaid debt, together with the sum of fifty-nine dollars and forty-six cents for the costs and charges aforesaid by him about his suit in this behalf expended, by the court now here adjudged to the said plaintiff, with his assent.

Judgment signed this seventh day of June, A. D. eighteen hundred and seventy. 10

M. BEASLEY, *Chief Justice.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do hereby certify the foregoing to be a true transcript of the record of judgment in the above stated cause as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at Trenton, this fourteenth day of October, A. D. eighteen hundred and seventy.

[L. S.] CHARLES P. SMITH, *Clerk* 20

Bill of Exceptions.

Be it remembered, that at a Supreme Court Circuit held at the city of Jersey City, in and for the county of Hudson, on the sixteenth day of May, A. D. one thousand eight hundred and seventy, before Joseph D. Bedle, esquire, one of the Justices of the Supreme Court, the several issues in the above stated cause joined between the said parties, according to the form of the statute in such case made and provided, came on to be tried (*pro ut* the said issues,) at which day, before the said Justice, came as well the said Elisha 30 Ruckman as the said Stephen B. Ransom, by their respective attorneys, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said several issues in manner aforesaid respectively joined; and thereupon the said Stephen B. Ransom,

to mantain the said issues on his part, proved the signing, sealing, and delivery by the said plaintiff and defendant of a certain paper writing, called articles of submission (*pro ut* the same, *Schedule A*,) and offered the same in evidence, and the defendant by his counsel objected to the admission of the said paper as evidence in the cause, and insisted that the same was not competent as legal evidence in the cause, for the reasons that the same was not sufficiently stamped, and that it did not agree with the submission set out in the
10 declaration, as to when the award should be delivered; and the said Justice having given his opinion that the same was competent and legal evidence in the cause, admitted the same; to which the defendant by his counsel, excepted, and prayed that this his bill of exceptions might be sealed, and it is sealed accordingly.

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

And further to maintain the said issues on his part, the said plaintiff called as a witness Joel Parker, who being duly sworn, testified as follows: [Being shown paper writing
20 called an award, *Schedule B.*]—The signature to this paper is in my handwriting.

And being cross-examined he says—

I received a letter from Mr. Ruckman, which I have here, dated November 20th, 1869, [see *Schedule C*,] I suppose I received it two or three days after its date; I think it is Ruckman's handwriting; I also received a letter of the same date from Mr. Cloke, Mr. Ruckman's attorney [see *Schedule D*;] this award I made up, I think, on January 1st, but did not actually sign it till some week or two after; I think I was
30 sworn as arbitrator on November 30th, the day we were to meet before I commenced to act; I think I was sworn before Arch. K. Brown, of Jersey City, Master in Chancery—he was then called as a witness afterwards for the plaintiff, I think.

[The plaintiff here offered in evidence the said paper, marked *Schedule B.*]

The defendant by his counsel objected to the admission of the said paper as evidence in the cause, and insisted that the same was not competent or legal evidence in the cause

for the reasons that it appeared to be under seal, which is not in accordance with the submission, and that there was no subscribing witness to the seal, and the seal was not proven, and that the said paper is not stamped, and therefore, by law, is void; and that the said arbitrator was not sworn till November 30th, 1869, and after he was sworn gave no notice to the defendant of a time and place appointed for a hearing; and that it does not appear that the arbitrator was sworn according to law before he entered upon the duties of the arbitrator, and that the award is void, not being according to the submission, and that the arbitrator's authority was revoked before he was sworn—before November 30th, 1869—before he entered upon the duties of his office as arbitrator, and before the award was made; and that it does not appear that any legal notice was given to the defendant of the time and place when and where the arbitrator would proceed to discharge his duties as such arbitrator, and that the time within which the hearing was to take place had expired before November 30th, 1869, and that the time within which, by the submission, the award was to be made had expired when it was made, and that it does not appear in evidence that any notice was given to the defendant at the time when the award would be made, nor of the fact that it was made, and that it does not appear that the arbitrator was sworn before a person competent to swear an arbitrator. And thereupon the said justice reserved the matter for further consideration of said objections.]

[The defendant, by his counsel, here admitted the letter of November 20th, 1869, *Schedule C* above, to be in the handwriting of defendant.]

And the said witness, Joel Parker, upon his re-direct examination by the plaintiff, did further testify as follows: [The said plaintiff offered to ask the said witness the following question, to wit.:]

Quest. Did you ever send the award to Mr. Ruckman, or notice of any kind that you had made the award in that matter, and that you had the award subject to his order, wanting to know whether you should deliver it to him, or he should call for it?

[To which question the defendant, by his counsel, objected

as illegal, for the reason that the said question was leading; and the said justice having given his opinion that the said question was legal and proper, admitted the same to be put to the witness; to which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

And thereupon the witness testified in answer to said
10 question—

Ans. I made two awards just alike; the one I sent to Mr. Ransom, the other I still have; both were signed as originals; I have here a copy of a letter directed to Elisha Ruckman, dated Freehold, January 22d, 1870, which I think I sent to Mr. Ransom to be delivered to Mr. Ruckman [see *Schedule E;*] this is a letter of Mr. Cloke's, dated January 29th, 1870, received by me a day or two after; these letters were all received in course of mail [see *Schedule F.*]

Quest. Do you know whether Mr. Cloke was the attorney of Mr. Ruckman?

20 *Ans.* I have no knowledge, excepting these letters; I received a letter before the hearing, and after the hearing also, from Mr. Ruckman, in due course of mail; the one after the hearing was dated January 29th, 1870; I wrote to Mr. Ransom requesting him to serve that letter on Mr. Ruckman, stating that I had made up the award; this oath [*Schedule H*] is the original oath which I took before Mr. Brown; it is the only oath I took.

Albert S. Cloke, another witness called by the plaintiff, and
30 duly sworn, testified as follows:

I was the attorney and counsel for Mr. Ruckman, from as early as November last. [Being shown letter of November 20th, 1869, *Schedule D*]—

That is my handwriting; it was written at request of Mr. Ruckman; I was his attorney and counsel then. [Being shown letter of January 29th, 1870, *Schedule F*]—

That is my handwriting also, written at the request of Mr. Ruckman to Governor Parker; I acted as counsel in refer-

ence to this matter between Mr. Ruckman and Mr. Ransom from November, till two or three weeks ago.

And being cross-examined, he says—

Mr. Ruckman did not, to my knowledge, request me to word it in any particular way; he requested me to write to Mr. Parker and notify him that he would not submit to arbitration, revoking the arbitration, and requesting a reply.

[The plaintiff then offered and read said letters in evidence, the said justice having overruled the objection of the defendant to the same.] 10

Stephen B. Ransom, another witness called by the plaintiff, and duly sworn, testified—

I received from Governor Parker, with a copy of the award which he sent me by mail, a notice in his own handwriting, signed by him, to Mr. Ruckman, that he requested that I would have it delivered to Mr. Ruckman, so he would be sure to get it; I directed my boy to make a copy of it, which he did, and I believe I compared it with him, and to serve it on Mr. Ruckman; I handed this to my office boy, John W. Heck, somewhere between January 22d and January 20 28th last, with a request that he would hand it to Mr. Ruckman; the notice was in Governor Parker's handwriting.

John W. Heck, another witness called by plaintiff, and duly sworn, testified—

[A paper being shown witness]—This is in my handwriting; the one I copied this from I served on Mr. Ruckman, personally, on January 28th, 1870; I think I compared this with the original.

[The plaintiff here offered in evidence said paper, *pro ut* the same, *Schedule E.*] 30

[The defendant, by his counsel, objected to the admission of the said paper as evidence in the cause, and insisted that the same was not competent or legal evidence, for the reason that no notice had been given to the defendant to produce the original; and the said justice having given his opinion that the same was competent and legal evidence in the cause, admitted the same; to which the defendant, by his

counsel, excepted, and prayed that his bill of exceptions might be sealed, and it is sealed accordingly.

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[The plaintiff the offered in evidence the notice which Governor Parker produced as a copy of the one he sent, dated January 22d, 1870, to show that they are identical, *pro ut* the same, *Schedule L.*]

[The defendant, by his counsel, objected to the admission
10 of the same, and insisted that the same was not competent or legal evidence in the cause, on the ground that there was no connection between it and defendant; and the said justice having given his opinion that the same was competent and legal evidence, admitted the same; to which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[The plaintiff here offered in evidence the letter of Elisha Ruckman, dated January 29th, 1870, *pro ut* the same, *Sched-*
20 *ule L*, which was admitted.]

Stephen B. Ransom, being re-called for plaintiff, testified—[A paper being shown witness]—That is a copy of a notice, the original of which, in my own handwriting, I served personally on Elisha Ruckman, November 20th, 1869.

[The plaintiff then offered said paper in evidence, *pro ut* the same, *Schedule I.*]

[The defendant, by his cousel, objected to the admission of the same, and insisted that the same was not competent or legal evidence in the cause, for the reasons that no notice
30 had been given to produce the original, and the arbitrator had not been sworn at the time the notice was given, and the length of time of notice was not sufficient, and the original, appearing to be in Mr. Ransom's handwriting, was not a legal notice of time and place appointed for the hearing by the arbitrator—such notice should come from the arbitrator himself; and the said justice having given his opinion that the same was competent and legal evidence in the cause, admitted the same; to which the defendant, by his counsel

excepted, and prayed that this his bill of exceptions might be sealed, and it is sealed accordingly.]

[This paper was reserved for further consideration, but afterwards admitted and exception allowed; this may be regarded as the proper exception subject to that order.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

Mr. Ransom further testified—When I handed Mr. Ruckman the notice, he informed me that he would not allow any hearing before Governor Parker at any time.

[To this evidence the defendant, by his counsel, objected, 10 and insists that the same is not competent and legal evidence in the cause, for the reason that anything said by the defendant to authorize the arbitrator to go on in defendant's absence must have been said to the arbitrator by the defendant; and the said justice having given his opinion that the same was competent and legal evidence, admitted the same; to which the defendant, by his counsel, excepted, and prayed that this his bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.* 20

Mr. Ransom further testified—When I gave this notice to Mr. Ruckman, I had received a letter from Governor Parker dated November 16th, 1869, *pro ut* the same, *Schedule K;* it is Governor Parker's handwriting.

[The plaintiff here offered said letter in evidence, and the defendant, by his counsel, objected to the same, and insisted that the same was not competent or legal evidence in the cause; and the said justice having given his opinion that the same was competent and legal evidence, admitted the same; to which the defendant, by his counsel, excepted, and 30 prayed that this his bill of exceptions ought to be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

Mr. Ransom further testified—I had previously written to Governor Parker to fix the time for a hearing, and this is the answer I received.

Joel Parker, being recalled by the plaintiff, testified—[Being letter, *Schedule K*]—That is my writing; I sent it to Mr. Ransom; by that letter I fixed the time for the hearing of this arbitration at November 30th, 1869, unless there were objections; I wrote to Mr. Ransom, communicating the fixing of that time; I heard the case that day, November 30th; Mr. Ransom was there with his witnesses; Mr. Ruckman was not there; a few days before the time fixed, I received these letters from Mr. Ruckman and Mr. Cloke that
10 have been offered this morning; I never received any notice from Mr. Ruckman or Mr. Cloke that that time would not suit them.

And being cross-examined, he said—

That is the only letter by which I fixed the time for the hearing.

[The plaintiff here offered in evidence the letters of November 20th, 1869, *pro ut* the same, *Schedules C. and D.*]

[The plaintiff also offered in evidence the oath taken by the arbitrator, *pro ut* the same, *Schedule H.*]

[The defendant, by his counsel, objected to the admission
20 of the same, and insisted that the same was not competent or legal evidence in the cause, for the reason that it is not such an oath as the law required an arbitrator to take, and is not stamped; and the said justice having given his opinion that the same is competent and legal evidence, admitted the same; to which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[The plaintiff here offered in evidence the said paper,
30 marked *Schedule B*, which before he had offered, and the defendant, by his counsel, objected to the admission of the same as evidence in the cause, and insisted that the same was not competent or legal evidence in the cause, for the reasons hereinbefore stated; and the said justice having given his opinion that the same was competent and legal evidence in the cause, admitted the same; to which the de-

fendant, by his counsel, excepted, and prayed that this exception might be sealed, and it is sealed accordingly.

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

These exceptions are all to be taken in reference to the whole evidence on the part of the plaintiff, as some of the rulings were reserved and not made until the close of the plaintiff's case.

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

The plaintiff having rested his cause, the defendant, by his counsel, insisted that the plaintiff had failed to make out 10 a legal cause of action against him, and moved that the plaintiff be called; whereupon the court refused to direct the plaintiff to be called; to which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

And thereupon, to maintain the said issues upon his part, the defendant called as a witness—

Joel Parker, who having been previously duly sworn, now testified in answer to question—

Quest. How came you to proceed with the arbitration on 20 November 30th, 1869, in the absence of Mr. Ruckman?

Ans. My memory is, that before that day I wrote to Mr. Ransom, stating that Mr. Cloke and Mr. Ruckman had sent these letters to me that have been offered, and I received a letter from Mr. Ransom stating that he would be there with his witnesses on that day, and that upon the faith of that agreement being signed, he had given up the papers in the case, and hoping I would be at home; the day came and we proceeded.

Quest. Was there anything said on that day in reference 30 to a postponement?

Ans. My recollection is, that when that day came and Mr. Ransom was there, I think I again stated I had received these letters, and I showed him the letters, or stated the contents to him; Mr. Ransom said he was there ready to proceed, and requested me to go on with the hearing according

to notice ; I was then sworn ; the submission was proved before me; then Mr. Ransom proved the notice of Mr. Ruckman, and that he served it personally upon him, November 20th.

Quest. Did you make any objections to going on with it?

Ans. I think I told Mr. Ransom, not exactly in the form of an objection, that if he wished me to go on, I would do so, but if this was a legal revocation he would run the hazard; I do not remember the exact words of his reply, but I con-
10 cluded to go on; I professed myself willing to go if he wished me to, under the circumstances, on the ground that he had given up the papers in the case, and this agreement had been signed.

Quest. What papers had been given up?

Ans. Cases he had been concerned in for Mr. Ruckman.

Quest. You understood from Mr. Ransom he had given up to Mr. Ruckman the papers he had had from Mr. Ruckman?

Ans. Yes, sir, that was my understanding; I don't know
20 that he said "given them up to Mr. Ruckman"—whether to him or his attorney; I have a letter from Mr. Ransom on that subject, dated November 26th, which shows that matter more fully; I also told Mr. Ransom that I would be responsible for no forms; I would only report my results on the matters between them.

Witnesses were sworn before me in reference to all the matters that I reported upon, and also all matters submitted, as I supposed; I was engaged two or three days in this matter, at different times—parts of days and evenings.

30 On the day of the hearing, November 30th, I said to Mr. Ransom, "You must draw up the affidavit for me, or have it drawn up, and take such steps as you think best; if you insist upon it I will go on; I think it is my duty to do so, for you say to me there has been a submission signed;" he told me to proceed; I do not know in whose handwriting the award is, but blanks were left in the draft for me to fill up, which I did, in my own handwriting, with the words and figures: "January 1, 1870," and "3d Tuesday in February," and "5011.13;" I put these in at the time I signed the
40 award; I think I signed the award a week or two after its

date, and sent that letter to Mr. Ruckman a few days, three or four, after I signed it.

[Thereupon the respective parties having agreed in open court, before said justice, that the defendant might, at the trial, file, as if in due time, any additional pleas which should set up a legal, substantial defence, the said defendant, by his counsel, tendered the following pleas:

And the said defendant for a further plea in this behalf, by leave, &c., saith, that the said arbitrator, named in the said articles of agreement in said declaration mentioned, did not, 10 on or before the time mentioned in the said articles of agreement, for that purpose, make any award in writing, under his hand, of and concerning the premises in the said articles of agreement mentioned, ready to be delivered to the said parties, as in said declaration is alleged.

And of this he puts himself upon the country, &c., and the plaintiff doth the like.

And for a further plea in this behalf, by like leave of the court, &c., the defendant saith, that the plaintiff ought not to have or maintain his action aforesaid against him, because 20 he says that the said arbitrator, in making his said pretended award, in said declaration mentioned, took into consideration and included in said award the sum of two hundred and fourteen dollars and forty cents, for eight bills of pretenned bills of costs, taxed after the said articles of agreement were executed and delivered in the court of Oyer and Terminer and General Jail Delivery in Bergen county, and which were not matters in difference between the said parties to the articles of agreement at the time they were executed and delivered, and which were not referred to by said articles of 30 agreement to the arbitrament of said arbitrator, and this the defendant is ready to verify; wherefore he prays judgment if the plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf, by like leave, &c., the defendant saith, that the plaintiff ought not to have or maintain his aforesaid action against him, because he says that the said arbitrator included in the amount of his said

award, in said declaration mentioned, certain matters not embraced within the said articles of agreement, and not referred thereby to said arbitrator, and not in difference between the said parties thereto, at the time the said articles of agreement were executed, to wit, August thirtieth, A. D. eighteen hundred and sixty-nine, to wit, eight bills of costs, in eight several pretended suits of the State against Elisha Ruckman, by indictment, in the Court of Oyer and Terminer and General Jail Delivery, in and for the county of Ber-
10 gen, and which said bills of costs, pretended to be taxed bills of costs for said plaintiff, as attorney for said defendant, in said eight several suits by indictment, and for his disbursements therein, as such attorney, amounting in all to two hundred and fourteen dollars and forty cents, and also, certain services rendered by said plaintiff, and certain disbursements made by him after the execution and delivery of said articles of agreement.

And this the defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or main-
20 tain his aforesaid action thereof against him, &c. And for a further plea in this behalf, the defendant, by like leave, &c., saith, that the plaintiff ought not to have or maintain his aforesaid action against him, because he says that after the said articles of agreement were executed and delivered, in said declaration mentioned, to wit, on the twentieth day of November, A. D. eighteen hundred and sixty-nine, he, this defendant, by writing, under his hand, then executed and delivered to the said arbitrator, revoked and annulled, the said articles of agreement or submission, and this he, the de-
30 fendant, is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf, the defendant, by like leave, &c., saith, that the plaintiff ought not to have or maintain his aforesaid action against him, because he saith that the said arbitrator, in the said articles of agreement in said declaration mentioned, to wit, Joel Parker, before he proceeded to the business submitted to him by said articles of agreement, did not take an oath or affirmation, faithfully
40 and fairly to hear and examine the matters thereby referred

to him, and make a just and true report, according to the best of his skill and understanding, nor any oath or affirmation of like nature, before any judge of any court of record, or any justice of the peace of this state, and this the defendant is ready to verify; wherefore he prays judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against him, &c.

And for a further plea in this behalf, by like leave, &c., the defendant saith, that the plaintiff ought not to have or maintain his aforesaid action against him, because he says 10 that after the said arbitrator, to wit, Joel Parker, had been sworn as in said declaration, and copy of award annexed thereto mentioned, he fixed no time or place for hearing the matters referred to him by the said articles of agreement, in said declaration mentioned, and did not give any notice to this defendant, after said arbitratior was so sworn, that he, the said arbitrator, had fixed Tuesday, the thirtieth day of November, A. D. eighteen hundred and sixty-nine, at the hour of ten in the forenoon of that day, at Freehold, in the county of Monmouth, as the time and place of hearing the 20 said matters before him, the said arbitrator, nor did the defendant attend at said time and place, or receive, in any manner, notice thereof; and this the defendant is ready to verify, wherefore he prays judgment, if the said plaintiff ought to have or maintain his aforesaid action thereof against him.

DIXON & COLLINS,
Attorneys of defendant.

[And thereupon the plaintiff objected to all of said pleas, except the first, and the defendant, by his counsel, having stated at the request of the said justice that the defendant 30 proposed to prove the second and third pleas by evidence extrinsic to the submission and the award, the said justice overruled the offer of the said pleas, and the offer of the said defendant to prove the same, on the ground that in substance they do not set up a legal defence to the action, to which the defendant by his counsel, excepted, and prayed, that this bill of exception might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[And as to the fourth plea offered, the said defendant, by his counsel, having stated at the request of said justice that the defendant did not propose under that plea to prove any different revocation from what already appears in the case, the said justice overruled the offer of the said fourth plea, upon the ground that the substantial matter upon which it is offered to base the plea is not in itself a legal defence; to which the defendant, by his counsel, excepts, and prays that this bill of exception might be sealed, and it is sealed
10 accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[And as to the fifth plea offered, the said defendant, by his counsel, having stated at the request of the said justice that the defendant proposed under the fifth plea to produce no further testimony, than is already in on the substantive matters of that plea, *viz.* the affidavit before Arch K. Brown, the said justice refused to allow that plea, upon the ground that it is not warranted by the testimony, and does not contain a legal defence upon the testimony as it stands; to
20 which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[And as to the sixth plea offered, the defendant, by his counsel, having stated, at the request of said justice, that the defendant proposed to produce under that plea no other testimony than is already in the case, the said justice overruled the offer of that plea, upon the ground that it is not warranted by the testimony, and does not contain a legal
30 defence upon the testimony as it stands; to which the defendant, by his counsel, excepted, and prayed that this bill of exception might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[The defendant, by his counsel, thereupon offered to prove by extrinsic testimony that, in making the award, Joel Parker included therein, and allowed to the plaintiff, moneys claimed to have been expended by the plaintiff, and compen-

sation for services claimed to have been performed by the plaintiff after the submission was entered into, and which were not covered by the submission; whereupon the said justice gave his opinion that evidence extrinsic to the submission and award was not competent or legal for the proof of such matters, and overruled the said offer; to which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.* 10

[The defendant, by his counsel, thereupon offered to prove by the arbitrator that in making his award, he included therein the amount of eight bills of cost alleged to have been taxed in the Bergen Oyer and Terminer, which were not in difference between the parties August 30th, 1869, the evidence offered being extrinsic to the submission and award; whereupon the said justice overruled said offer; to which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.] 20

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[The defendant, by his counsel, thereupon offered to prove that the words and phrase "a large number of suits at law," in the submission, did not include eight suits in the Bergen Oyer and Terminer, for the taxed costs of which the arbitrator made an allowance; which offer the said justice overruled; to which the defendant, by his counsel, excepts, and prays that this bill of exceptions may be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.* 30

The defendant thereupon offered in evidence the statement of the claim of the plaintiff, produced before Governor Parker, and Govenor Parker's evidence as to that statement, to show that the claims of the plaintiff were for matters which occurred after the submission, and by Governor Parker's evidence that the arbitrator allowed those claims; and the said justice overruled said offer; to which the defendant, by

his counsel, excepted, and prays that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[The defendant thereupon offered to prove, by the plaintiff's statement, before the arbitration, in connection with Governer Parker's evidence, that the plaintiff knowingly procured the arbitrator to allow him for matters which were not included in the submission, and for claims that were not legal; the said justice overruled this offer, upon the
10 ground that it was proposed to show it by extrinsic testimony; to which the defendant, by his counsel, excepted, and prayed that this bill of exception might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

And further to maintain the said issues on his part, the defendant, Elisha Ruckman, being duly sworn testified in answer to question—

Quest. Did you receive from Mr. Ransom a bill stating his demands against you, before signing the submission?

20 *Ans.* I did.

[And thereupon the plaintiff objects to both question and answer, as being not competent or legal in the cause; and the said justice being of opinion that neither said question nor answer was competent or legal, overruled them both; to which the defendant, by his counsel, excepts, and prays that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

[And thereupon the defendant, by his counsel, offered to
30 show that when the submission was entered into on August 30th, 1869, there were certain suits, both at law and in equity, which had been or were pending, and which were well understood by both parties to said submission, and mentioned in a certain bill, which said defendant also proposed to offer, delivered by the plaintiff to the defendant, and that the several suits referred to in the submission were the several suits mentioned in that bill, and that the whole amount of

the plaintiff's said bill was $3600.06, and that the matters embraced in the bill were the only matters in difference between said parties on August 30th, 1869, so far as the plaintiff's claims were concerned; and the plaintiff having objected thereto, the said justice overruled the said offer; to which the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.*

And thereupon the defendant rested, and the evidence on both sides being closed, the said justice charged the jury as follows, that is to say: 10

GENTLEMEN OF THE JURY:—The result of the ruling of the court in this case is, there is no defence; the plaintiff is entitled to a verdict for $5180.14, the amount of the award, with interest, and if you have no objections I will so enter it.

[To which charge of the court the defendant, by his counsel, excepted, and prayed that this bill of exceptions might be sealed, and it is sealed accordingly.]

[L. S.] J. D. BEDLE, *Justice Supreme Court.* 20

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true copy of the bill of exceptions filed in the above stated cause as the same remains on file in my office.

In testimony whereof, I hereto set my hand and the seal of the said court, at Trenton, this fourteenth day of October, A. D. eighteen hundred and seventy.

[L. S.] CHARLES P. SMITH, *Clerk.*

The state of New Jersey to our Justices of our Supreme Court of Judicature, greeting: 30

Because in the record and proceedings, and also in the giving of judgment, in a plaint which was in our said court, before the justices thereof, between Stephen B. Ransom and Elisha Ruckman, of a plea that the said Ruckman render unto the said Ransom a certain debt which the said Ransom demanded of the said Ruckman, as it is said, manifest error has intervened, to the great damage of the said Ruckman, as by his

complaint we are informed; we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice be done to the parties aforesaid in this behalf, do command you, that if judgement be thereupon given, then you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to the Court of Errors and Appeals of last resort in all causes, to be held at Trenton, on the twenty-first day of June instant, and this writ, that the record and pro-
10 ceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to the law and custom of the state of New Jersey ought to be done.

Witness Abraham O. Zabriskie, esquire, our Chancellor, and president of our said Court of Errors and Appeals of last resort in all causes, at Trenton aforesaid, this ninth day of June, in the year of our Lord one thousand eight hundred and seventy.

[L. S.] H. N. CONGAR, *Clerk.*

DIXON & COLLINS, *Attorneys.*

20

Assignment of Errors.

[Filed October 24, 1870.]

Afterwards, to wit, at the Term of June, A. D. eighteen hundred and seventy, before the Court of Errors and Appeals in the last resort in all causes in New Jersey, comes the said Elisha Ruckman, by Dixon & Collins, his attorneys, and says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, to wit, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said Stephen B. Ran-
30 som to have or maintain his aforesaid action thereof against him, the said Elisha Ruckman; and also there is error in this, to wit, that on the trial of said cause in the Supreme Court Circuit held in and for the county of Hudson, the justice before whom said cause was tried admitted incompetent and illegal evidence produced by the said Stephen B. Ransom,

and objected to by the said Elisha Ruckman; whereas, by the law of the land, said evidence ought not to have been admitted; therefore, in that there is manifest error; and also there is error in this, to wit, that on the said trial, the said justice refused to admit, and overruled the offer of competent and legal evidence offered by the said Elisha Ruckman, whereas, by the law of the land, the said evidence ought to have been admitted; therefore, in that there is manifest error; and also there is error in this, to wit, that on said trial the said justice permitted leading and improper questions to be 10 put by the said Stephen B. Ransom to the witnesses produced in his behalf, and overruled the objections made to said questions by the said Elisha Ruckman; whereas, by the law of the land, such questions ought not to have been put, and such objections ought not to have been overruled; therefore, in that there is manifest error; and also there is error in this, to wit, that although the parties had agreed in open court before said justice that the said Elisha Ruckman might, at the trial, file as if in due time any additional pleas which should set up a legal substantial defence, and the said Elisha Ruck- 20 man at said trial did tender and offer to file several additional pleas which did set up a legal substantial defence, yet the said justice overruled the tender and offer of the said pleas, or some of them, and the offer by said Elisha Ruckman to prove the same for the causes set forth in the bill of exceptions in said cause; whereas, by the law of the land, the said pleas, or some of them, should have been received, and the proof of the same offered by the said Elisha Ruckman, should also have been recorded; therefore, in this there is error; and also there is error in this, to wit, that on said trial 30 the said justice held that the evidence produced by the said Stephen B. Ransom in support of the issues on his part, was sufficient in law to entitle the said Stephen B. Ransom to have against the said Elisha Ruckman the verdict which the jury rendered, and judgment therein, and refuse to order the said Stephen B. Ransom to be called; whereas, by the law of the land the said evidence did not so entitle the said Stephen B. Ransom, and the said Stephen B. Ransom ought to have called; therefore, in this there is manifest error; and also

there is error in this, to wit, that on said trial, the said justice charged the said jury as follows:

"The plaintiff is entitled to a verdict for five thousand one hundred and eighty dollars and fourteen cents, the amount of the award, with interest." Whereas, by the law of the land, the said justice ought not to have so charged; therefore, in that there is manifest error; and also there is error in this, to wit, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said Stephen B. Ransom and against
10 the said Elisha Ruckman; whereas, by the law of the land, the said judgment ought to have been given for the said Elisha Ruckman, against the said Stephen B. Ransom.

And the said Elisha Ruckman prays that the judgment aforesaid, for the errors aforesaid, and for the errors in the said record and proceedings being, may be reversed, annulled, and altogether for nothing holden, and that he may be restored to all things which he has lost by occasion of said judgment.

DIXON & COLLINS, *Attorneys of, and*
20 J. DIXON, JUN., *Counsel with said plaintiff in error.*

SCHEDULES.

Schedule A.

Whereas, a controversy is now pending between Elisha Ruckman, of the county of Bergen, and state of New Jersey, gentleman, and Stephen B. Ransom, a counsellor-at-law, of the state of New Jersey, resident of Jersey City, in the county of Hudson, and state aforesaid, in relation to the amount of counsel fees to be paid by the said Elisha Ruckman to the said Stephen B. Ransom for his labor and services as
30 counsellor-at-law in conducting a large number of suits at law and in equity in the various courts of the state of New Jersey, and for advice concerning the same, and concerning the business generally of the said Elisha Ruckman, for a period

embracing several years prior to the date of these presents, in his capacity of counsellor-at-law and legal advisor of said Elisha Ruckman; now, therefore, we, the undersigned, Elisha Ruckman and Stephen B. Ransom aforesaid, do hereby submit the said controversy, and all matters therewith connected, to the arbitrament of the Honorable Joel Parker, of Freehold, in the county of Monmouth, and state of New Jersey, both as to the amount of said counsel fees for the conducting of the said suits, in the various courts of law and of chancery of this state, and for advice pertaining 10 to said matters of law and of equity, and for disbursements and expenses laid out in conducting and carrying on the same matters, and for attorney's fees connected therewith, and of all matters of account between the said parties up to the date of these presents, to be audited and adjusted by the said Joel Parker, as such arbitrator between the said parties as aforesaid. And we do mutually agree and covenant to and with each other that the award to be made by the said arbitrator shall in all things, by us and each of us, be well and faithfully kept and observed, provided, however, that the 20 said award be made in writing, under the hand of the said Joel Parker, and ready to be delivered to the said parties, or such one of them as shall desire it, by the first day of next. And it is further agreed by and between the said parties, that the expenses of the said arbitration shall be borne equally between them, share and share alike; and it is hereby further agreed by and between the said parties, that judgment in pursuance of the award so rendered may be entered in the Supreme Court of the state of New Jersey, to the end that all matters now in controversy between them 30 in that behalf shall be finally determined.

Witness our hands and seals this thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine.

ELISHA RUCKMAN. [L. S.]
S. B. RANSOM. [L. S.]

Signed, sealed, and delivered in the presence of
J. FLAVEL MCGEE.

[5 cent Revenue Stamp, canceled August 30th, 1869.]

Schedule II.

State of New Jersey, Monmouth county, *ss.*—Joel Parker, arbitrator chosen and agreed upon by Stephen B. Ransom and Elisha Ruckman, to hear and determine certain matters in difference between them, the said Stephen B. Ransom and Elisha Ruckman, being duly sworn, on his oath doth depose and say—that he will faithfully and fairly hear and examine the case in question between the said parties, and make a just and true report, according to the best of his skill
10 and understanding.

Joel Parker.

Sworn and subscribed, this thirtieth day of November, A. D. 1869, before me.

Arch. K. Brown, *M. C.*

Schedule B.

Award between Stephen B. Ransom and Elisha Ruckman, made the first day of January, in the year of our Lord one thousand eight hundred and seventy (1870).

The said Stephen B. Ransom and Elisha Ruckman, having
20 by their agreement, made under their respective hands and seals, on the thirtieth day of August, in the year of our Lord one thousand eight hundred and sixty-nine, mutually agreed to submit certain matters in difference between them, specified in the said submission, to the award and final determination of the subscriber, Joel Parker, an arbitrator by them chosen and agreed upon, and I, the said Joel Parker, arbitrator as aforesaid, having fixed Tuesday, the thirtieth day of November, in the year of our Lord one thousand eight hundred and sixty-nine, at the hour of ten in the forenoon of
30 that day, at Freehold, in the county of Monmouth, as the time and place for hearing the said matters before me, the said Stephen Ransom at the time and place so fixed appeared before me, and I having been first duly sworn faithfully and fairly to hear and examine the cause in question be-

tween the said parties, and make a just and true report, according to the best of my skill and understanding, did, at the said time and place so fixed as aforesaid, proceed to the hearing of the said matters so submitted to me as aforesaid; and the said Elisha Ruckman not appearing before me at the time and place so fixed as aforesaid, proof was made before me that written notice of the said meeting and of the time and place of the said meeting had been served upon the said Elisha Ruckman, personally, at least ten days prior to the time of the said meeting, and I having heard the allegations and proofs of the said Stephen B. Ransom, the said Elisha Ruckman not appearing as aforesaid, I, Joel Parker, the said arbitrator, do hereby make and publish this my award of and concerning the said matters to me submitted as aforesaid, as follows:

First. I do award that the said Elisha Ruckman pay to the said Stephen B. Ransom, on or before the third Tuesday of February next, the sum of five thousand and eleven dollars and thirteen cents ($5011.13.)

Secondly. I do award that the said sum is in full satisfaction and discharge of the counsel fees, labor, and sevices of the said Stephen B. Ransom, as counsellor-at-law in conducting suits at law and in equity in the various courts of the state of New Jersey for the said Elisha Ruckman, and for advice concerning the same, and concerning the business generally of the said Elisha Ruckman prior to the date of the said submission, in his capacity of counsellor-at-law and legal adviser of the said Elisha Ruckman, and of disbursements and expenses paid by the said Stephen B. Ransom in conducting and carrying on the said suits and matters of the said Elisha Ruckman, and of all attorney's fees connected with the said matters, and of all matters of account between the said parties up to the date of the said submission; and that all actions, suits, controversies, quarrels, and demands whatsoever relating to the matters aforesaid between them respectively, to the day of the date of the said submission to me as aforesaid, cease and be no further prosecuted.

Thirdly. The said Stephen B. Ransom having incurred and paid the sum of one hundred and twenty-six dollars for the services and fees of the said arbitrator, and for the legal fees

of witnesses produced and sworn before the said arbitrator, I do award that the said Elisha Ruckman do pay to the said Stephen B. Ransom the sum of sixty-three dollars, the one-half part thereof, on demand.

In witness whereof, I have hereto set my hand and seal the day and year first above written.

JOEL PARKER.

SCHEDULE C.

Jersey City, November 20th, 1869.

10 JOEL PARKER:—I hereby give you notice that I decline to submit any difference or account of Stephen B. Ransom to you, as he refused to carry out his agreement with me as to giving up to me of my papers in his hands, and has defaulted me in a suit in August last, and has now his bills taxed by the clerk of the Supreme and Chancery Courts; that he still has my papers, and has done me all the harm he could; kept me nine months longer in the King suit than there was need of.

I remain yours,

20 ELISHA RUCKMAN.

In the King case the interest was over $100 a day, and Ransom agreed to finish it up in February, 1869. He did not submit it until 12th of July, 1869.

E. RUCKMAN.

SCHEDULE D.

Jersey City, November 20th, 1869.

JOEL PARKER, ESQ.—Dear Sir:—Mr. Ruckman desired me to write to you in relation to the claim of Mr. Ransom against him for legal services, &c., and to say that he does not con-
30 sent to any settlement or adjustment of it. I write this at his decitation, and in view of the written agreement by claim to submit to you.

You will, of course, do in the premises what you deem most proper. I enclose also a letter written by Mr. R.

ALBERT S. CLOKE.

SCHEDULE E.

Freehold, January 22d, 1870.

ELISHA RUCKMAN, ESQ.—Dear Sir:—By virtue of the agreement executed by you and Stephen B. Ransom, on the 30th day of August, A. D. 1869, I have made my award in writing. It is ready for delivery to you; please notify me at once whether you will call for it, or if you wish me to send by mail to your address.

Yours, &c.,

JOEL PARKER, *Arbitrator, &c.* 10

SCHEDULE F.

Jersey City, January 29th, 1870.

HON. JOEL PARKER—Dear Sir:—Mr. Ruckman desires me to enter his protest against your award in his matters of difference with Mr. Ransom. He holds himself accountable for the costs only, to be taxed according to law.

Very respectfully,

ALBERT S. CLOKE.

SCHEDULE G.

Closter, Bergen Co., New Jersey, January 29th, 1870. 20

HON. JOEL PARKER:—It is a surprise that I received a notice from S. B. Ransom that you had made a decision in the bills of S. B. Ransom, of Hudson county, claims just and equitable of three times his claims, and Mr. Cloke told me he received a letter from you that you had declined to do anything in the matter. I object and protest against your action in this case; Cloke has noticed him for to tax his cost, and that has not been yet done; I hope this is a bar to your action.

I remain yours, &c., 30

ELISHA RUCKMAN.

SCHEDULE I.

Jersey City, November 19th, 1869.

ELISHA RUCKMAN, ESQ.:—Please to take notice that Hon. Joel Parker, the arbitrator agreed upon between you and myself to settle the matters in difference between us, has appointed Tuesday, the thirtieth day of November instant, at ten o'clock in the forenoon of that day, at his office in Freehold, in the county of Monmouth, state of New Jersey, for the hearing of the said matters before him.

10 Yours, &c.,

S. B. RANSOM.

SCHEDULE K.

Freehold, N. J., November 16th, 1869.

DEAR SIR:—Tuesday, the 30th inst., will suit me.

Yours, &c.,

JOEL PARKER.

S. B. RANSOM.

SCHEDULE L.

Freehold, January 22d, 1870.

20 ELISHA RUCKMAN, ESQ.—Dear Sir:—By virtue of the agreement executed by you and Stephen B. Ransom on the 30th day of August, A. D. 1869, I have made my award in writing. It is ready for delivery to you. Please notify me at once whether you will call for it, or if you wish me to send it by mail to you.

JOEL PARKER, *Arbitrator.*

New Jersey Court of Errors & Appeals.

STEPHEN B. RANSOM, Defendant in Error,

ats.

ELISHA RUCKMAN, Plaintiff in Error.

Writ of Error to Supreme Court
Brief & Points for Defendant in Error

I.

The submission was sufficiently stamped.

It is to be stamped as an agreement, which requires a five cent stamp on each sheet or piece of paper. It is all written on one sheet and stamped with a five cent stamp, which meets the requirements of the law. (Case, page 18, line 8.)

II.

The submission read in evidence does agree with the submission set out in the declaration, as to when the award should be delivered. (Case, p. 18, line 9.)

1st. The declaration alleges a covenant by both parties to abide by the award, provided the same should be made in writing under the hand of the arbitrator, ready to be delivered to the said parties, or such one of them as should desire. (Case, p. 11, line 1 to 4.) The submission is "provided, however, that the said award be made in writing under the hand of the said JOEL PARKER, and ready to be delivered to the said parties, or such one of them as shall desire it, by the first day of next." (Case, p. 13, line 25.)

The judge at the trial held that the words "by the first day of next," meant in a reasonable time, and that there was no substantial variance between the declaration and the submission in this respect.

2d. A copy of the submission is annexed to the declaration, and made part of it. (case, p. 11, line 8 to 10.) This, by statute, cures all mis-recitals in the declaration. *Nix. Dig.*

III.

The award was properly admitted in evidence.

1st. It is signed by the arbitrator as required by the submission. The fact of his having put a seal on it, does not invalidate it, and no subscribing witness is required either by law or the submission.

2d. JOEL PARKER, the arbitrator, swore that the award was made and signed by him. The seal was immaterial.

3d. No stamp is required on an award where the submission is properly stamped.

Burnap, vs. Losey; 1 Lansing, 111.

VI.

It is objected that the oath of the arbitrator, which was written out and annexed to the submission, is not stamped (*p. 24, line* 23), ~~2818.~~

1st. There is nothing in the act of Congress requiring an affidavit to be stamped.

The intendment is that it should be stamped as a certificate. But an affidavit is not a certificate.

The jurat is in no sense a certificate. It is rather an attestation.

2d. But an arbitration is a legal proceeding, and affidavits taken in legal proceedings require no stamps. The act of Congress exempts such.

3d. The law does not require the oath to be written out. All that is required is that the arbitrator shall be sworn faithfully and fairly to hear and examine the cause in question, and make a just and true report, according to the best of his skill and understanding.

When, therefore, the arbitrator certifies in his award that he took such oath, that is conclusive. No written oath is required.

4th. The swearing of the arbitrator on the day fixed for the hearing, before anything done in the case, was a compliance with the statute (*Nix. Dig.*, 26, §6). The language of the act is, "every arbitrator shall, before he proceeds to the business submitted to him, take an oath," &c. The business submitted to him is the hearing and determining the matters in controversy.

5th. Fixing a time for hearing and giving notice thereof to parties is no part of the business submitted, and may be, and always is, done before the swearing of the arbitrator.

6th. The swearing of the arbitrator was strictly according to law. The oath is in the exact language of the act.

7th. It was taken before a Master in Chancery. The act does not prescribe any officer before whom it may be taken. It simply authorizes any Judge of any Court of Record, or any Justice of the Peace in this State, to administer the oath. Since this act the general act of Feb. 14th, 1839, relative to oaths and affidavits (*Nix. Dig.*, p.

541, §30), provides that all oaths "are required to be made or taken by any statute of this State, or for any lawful purpose whatever, shall, and may be made and taken by and before the Chancellor or any Judge of a Court of Record of this State, or any Master in Chancery," &c.

The taking of this oath before a Master in Chancery is, therefore, a swearing according to law.

8th. The award is in strict accordance with the submission. It passes upon everything submitted and nothing else. The submission submits all controversies about labor and services, counsel fees, attorney's fees, disbursements and expenses, and all matters of account between said parties (Case 13, line 8 to 19.)

The award awards:

First. The sum of $5,011.13.

Second. That this sum is in full satisfaction and discharge of counsel fees, labor and services, attorney's fees, disbursements and expenses, and of all matters of account between said parties up to the date of said submission (Case, p. 15, line 1 to 18.)

9th. It does appear upon the face of the award that the legal notice was given to the defendant of the time and place, when and where, the arbitrator would proceed to discharge his duties as such arbitrator. (See award Case, p. 14 line 16 to 34.)

Here the award alleges that the arbitrator fixed the time for hearing; that proof was made before him that the Defendant had been served with ten days' personal notice of the time and place. He made no objection to the arbitrator that his notice was not sufficient. He asked for no further time, but gave notice that he would attend no hearing before the arbitrator at any time (Case, p. 23, line 7 to 9).

His objection, to be valid, should have been made to the arbitrator. He cannot be permitted to remain silent, or defy the authority of the arbitrator, and take advantage of his own neglect; or rather, I would say, manifest *bad faith*, to avoid the award. (See 3 Atk., 497.)

10th. The time within which the hearing was to take place had not expired before Nov. 30th, 1869, nor had the time within which, by the submission, the award was to have been made expired when it was made.

By the submission no time was fixed for the hearing or for the making of the award. The date on or before which the said award was to be made, is left blank. (See Award Case, p. 13, lines 28 and 29.)

All that can be required then is, that the award shall be made within a reasonable time after the execution of the submission. What is a reasonable, is a question of fact to be determined by the particular circumstances of each case by the jury. The jury having passed upon this question, without exception from the defendant to any charge of the Court upon this point, no advantage can be taken upon it here.

Again. Defendant allowed the arbitrator to go on and hear the case, and make his award, without a suggestion that the delay had been unreasonable, although by his communication to the arbitrator of Nov. 20th, 1869, he seems to have racked his brain very hard to find some excuse for refusing to appear before the arbitrator of his own choosing. (*See his letter, Schedule C, p.* 40 *of Case.*)

11th. No notice is required to be given to parties when an arbitrator will make his award. The making of the award is the private act of the arbitrator.

He publishes it by notifying the parties that he has made it and has it ready to deliver.

All the submission requires is that the arbitrator shall make his award in a reasonable time under his hand, and have it ready to deliver to the parties, or such of them as shall desire it. (*Case, p.* 13 *line* 26 *to* 29.)

12th. It does appear in evidence that notice was given that the award was made (*Schedule E and Schedule L, p.* 41 *and* 42) and two copies of a notice served on Defendant, on January 28th, 1870, by John Heck. See John Heck's evidence (*Case, p.* 21 *line* 23 *to* 29); S. B. Ransom's evidence (*Case, p.* 21 *line* 11 *to* 22).

See, also, Gov. Parker's evidence (*p.* 20, *line* 11 *to* 15; *also same page, lines* 24 *and* 25.

(*See, also, Schedule G, p.* 41.) A letter from Defendant to the arbitrator, acknowledging receipt of notice, January 29th, 1870.

On the same day his counsel, Mr. Cloke, writes at his request, protesting against the award. (*Schedule F, p.* 41.)

IV.

The arbitrator's authority was not revoked before the award was made.

There was doubtless an intent to revoke the submission, but it was a failure.

This attempt was made by Defendant's letter of Nov. 20th, 1869. Schedule C (*Case, p.* 40).

This document shows that Ruckman signed and sealed the submission in *bad faith*, with no intent to abide by it, or perform his part.

He seems to have supposed it necessary to assign some reasons for backing out of his solemn agreement.

He first places his refusal on the ground that the Plaintiff refused to give him up his papers, and defaulted him in a suit in August then last.

The submission was executed on next to the last day of August, so the grievance, if it had existed at all, existed on the day the submission was executed just as much as it did on the 30th November, when he attempted to back out of his agreement.

The same is true of his pretence of delay in the King case, from February till July.

His bad faith was so manifest that his own counsel appears to have been disgusted with him and astonished at his unblushing repudiation of a solemn contract.

See letter of Mr. Cloke of November 20th, 1869, (*Schedule D, p.* 40.)

But neither the letter of Ruckman, nor that of his counsel, Mr. Cloke, to the arbitrator, nor both together, amounted to a revocation of the submission.

1st. Neither of these papers refer in direct terms to the submission of 30th August, 1869. For aught that appears he refers to differences and accounts that may have arisen after the 30th August, 1869, which he refuses to submit, and which he does not consent to any adjustment or settlement of. The submission in question is not mentioned in either paper. Neither paper contains any words of revocation of that solemn instrument.

2d. But if these papers can by implication be held to refer to the submission in question, they amount to no revocation, as they contain no words to that effect, and

especially because the submission is executed under the seal of the Defendant, and his pretended revocation is a mere parole instrument, the rule of law being well settled, that when a submission is by deed, the instrument of revocation must be by deed also; that in all cases the instrument of revocation must be of as high a nature as that of the submission.

The authorities on this point being uniform, no case can be found where a submission under seal was ever allowed to be revoked by anything less than a writing under seal. See

Caldwell on Awards (*Ed. of* 1853), 410, 411.
Do. 79.
Van Antwerp v. Stewart, 8 *Johns*, *R*, 125.
Evans v. Check, 3 *Hayw*, 42.
Brown v. Leavitt, 26 *Me.*, (13 *Shep.*) 251.
Fritts v. Fritts, 3 *Cowen*, *R.*, 335.
Howard v. Cooper, 1 *Hill* (*N. Y.*), 44.
Craig v. Talbot, 2 *Barn. & Cres*, 179.
King v. Joseph, 5 *Taunt.* 452.
Melne v. Gratrix, 7 *East*, 608.
Kyd on Awards, 30
8 *Coke*, *R.*, 82.
Green v. Rote, 6 *Bing. R.*, 443.
Wade v. Vinior, 1 *Brownlow*, 62.
Sutton v. Tyrrell, 10 *Veb.*, 91.
16 *Johns*, *R*, 284.
2 *Duer* (*N. Y.*), 176.
Relyea v. Ramsay, 2 *Wend*, 602.
21 *Wend*, 628.
Wills v. Lain, 15 *Wend*, 99.
Watson on Arbitration and Award, 16, 21.

V.

All the evidence offered by the Defendant and overruled by the Court was rightly overruled.

For if the award is good on its face, it cannot be avoided by extrinsic matters.

No mistakes or misconduct of the arbitrator, and no excess of jurisdiction on his part can be set up in an action on the award to defeat it.

Otherwise an award would settle nothing, It would conclude neither party, if in an action upon it the whole merits of the controversy could be reopened and the case retried to determine whether the arbitrator's judgment was different from that of the Court and jury before whom the case was being tried. See

Sherron v. Wood, 5 *Hal.*, *R*, 7.
Hoagland v. Veghte, 3 *Zab*, *R*, 92.
Kyd on Awards, 139, 327, 329, *&c.*
2 *Johns*, *Ch.*, *R*, 339.
2 *Ves*, *Jr.*, 15.
Klein v. Catara, 2 *Gallison's C. C. R.*, 61.
Cramp v. Symons, 1 *Bing.*, 104.
Newland v. Douglass, 2 *Johns*, *R.*, 62.
Barlow v. Todd, 3 *Johns*, *R.*, 368.
Swingford v. Burr, 1 *Gow.*, 5.
1 *Saunders*, 327.
2 *Ves.*, 315. Chicot v Lequesne
Cranston v. Kinney, 3 *Johns*, *R.*, 212.
1 *Zab*, 32.
2 *do*, 578. } Bell v Price

VII.

The second and third pleas (*Case*, *p.* 27) offered by the Defendant at the trial were properly rejected by the Court, as they could only be sustained by the admission of evidence extrinsic the submission and the award.

Such evidence could not have been properly received. (*See authorities cited under V. Point.*) (*Case*, *p.* 29, *line* 28.)

VIII.

The fourth plea (*Case, p.* 28) offered by Defendant on the trial was properly rejected by the Court, as the plea does not allege that the pretended revocation was executed under seal. (*See on this point authorities cited under Point IV.*) (*Case, p.* 30, *line* 1.)

IX.

The fifth plea (*Case, p.* 28) offered by the Defendant was properly rejected by the Court,

1st. Because the Defendant's counsel stated that they had no evidence to sustain that plea, except the affidavit which had already been given.

2d. Because the plea proposes simply to show that the arbitrator was not sworn before a Judge of a Court of Record or any Justice of the Peace, while such arbitrator could have been legally sworn before a Master in Chancery or some other official. (*On this point see Point III.,* 6 *and* 7.) *Case, p.* 30, *line* 12.)

X.

The sixth plea (*Case, p.* 29) offered by Defendant on the trial was properly rejected by the Court,

1st. Because the plea set up a matter which could not be inquired into in said cause, upon the principle discussed under the V. Point.

2d. Because Defendant did not propose to offer any evidence in support said plea. (*See Case, p.* 30.)

XI.

The admission or rejection of new pleas offered at the trial is always a matter of discretion with the Judge who presides at the trial, and hence his rulings upon the admission or rejection of such pleas are not the subject matter of a bill of exceptions. No exception lies to his rulings on such questions, and no errors can properly be assigned upon such rulings. See

Crawford v. The N. J. R. R. Co., 4 *Dutch*, 479.
2 *Arch. Prac.*, 230.
Mc Coury v. Suydam, 5 *Hal.*, 248.
Wright v. The Lessee of Hollingsworth,
1 *Pet. U. S., R.*, 168.
Wood v. Young, 4 *Crauch.*, 227.
Holland qui tam. v. Bothneal, 4 *T R*, 594.

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N. J. Court of Errors and Appeals.

ELISHA RUCKMAN,
Plaintiff in Error,
vs.
STEPHEN B. RANSOM,
Defendant in Error.

In Error to Supreme Court.

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J. DIXON, JUN.,
Counsel for plaintiff in error.

Points for Plaintiff in Error.

Reason 1st. The justice who tried the cause admitted illegal evidence—

First. Allowed a copy of a paper in evidence without notice to produce original, and without proof of a comparison with the original. [Case, pp. 21 and 22.]

Second. Allowed a leading question to be put. [Case, pp. 19 and 20.]

Third. Allowed a notice, given by Stephen B. Ransom, to be put in evidence, fixing the time and *place* of arbitrator's first meeting. [Case, p. 22.] 10

Fourth. Allowed a letter of the arbitrator's, before he was sworn, written to Mr. Ransom, to be put in evidence. The letter itself fixing no place or *hour*, and giving no authority

to Mr. Ransom to fix the hour or the place. [Case, p. 23, and *Schedule K*, p. 42.]

Fifth. Allowed an oath, taken before an unauthorized person, in evidence. [Case, p. 24.]

Sixth. Admitted a paper, called an award, in evidence. [Case, p. 24. Objected to, pp. 18 and 19.]

Reason 2d. The justice aforesaid overruled competent evidence—

First. Overruled the evidence offered to show that arbi-
10 trator took into consideration and allowed for services performed by the plaintiff below, *after* the submission was entered into. [Case, pp. 30, 32, 33.]

Reason 3d. Allowed leading questions to be put. [Case, p. 19 and 20.]

Reason 4th. Overruled pleas containing a legal and substantial defence, after an agreement on part of plaintiff below, and permission by the court below, that they should be considered as filed. [Case, p. 29, 30.]

Reason 5th. Refused to non-suit. [Case, p. 25.]

20 Reason 6th. Justice took all questions of fact from the jury and directed a verdict for the plaintift below, for the full amount of the award, with interest. [Case, p. 33.]

Point 1. The evidence on the part of the plaintiff at the close of his case was insufficient, and the court should have non-suited.

First. The arbitrator had not taken the oath prescribed by law. The statute, *Nix. Dig.*, *p.* 31, § 6, declares that the oath shall be taken before a judge of a court of record, or any justice of the peace.

30 This act operated as a repealer of the act of 1839, *Nix. Dig.*, 629, so far as the oaths of arbitrators are concerned.

Until legally sworn he had no power to fix time or place, or do any act *as an arbitrator.*

Inslee v. *Flagg*, 1 *Dutcher* 369, 371, 376.

And this may be pleaded [p. 372].

Before an award can support an action it must *first appear* that the arbitrator had sufficient authority to make it. 2 *Gr. Ev.* 371.

In this case the arbitrator did not make the award. He only agreed to "report results." [See case, p. 26, line 26.]

He did not write it and does not know who did. [See case, p. 26, lines 30 to 40.]

It does not appear he ever read it.

On p. 18, lines 20 to 30, he says the "signature" is his, 10 and was put to it "some week or two *after* January 1st."

On pp. 25 and 26, Governor Parker details the *mode* in which the plaintiff below procured or made this award.

Point 2. The arbitrator had fixed no *hour* or *place* to hear the parties. *Schedule K* fixes neither. And he fixed it in no other way than by that. [See case, p. 24, lines 15 and 16.]

The arbitrator himself gave no notice to Ruckman of any time or place, and it does not appear that he *authorized* any one else to do so.

Point 3 Mr. Ruckman supposed he had taken the neces- 20 sary legal steps to put an end to this arbitration, and Mr. Ransom knew that to be so.

[See case, p. 40, *Schedules C and D.*]

[See case, p. 25 and 26.]

The proceeding *by plaintiff* afterwards, *ex parte*, without notice to Mr. Ruckman of the intention to do so, and procuring the allowance for matters not in difference, and matters illegal in themselves, Mr. Ransom consenting to "run the hazard," was a *fraud of the party*, which in law should make the award void. If this is not *such* a fraud, what would 30 be?

See *Billing on Awards, p.* 68.

Although, possibly, fraud in the arbitrator cannot be *pleaded*, fraud in the party certainly makes void.

See *Doddington* v. *Hudson*, 1 *Bing.* 384.

Award set aside, where arbitrator unexpectedly fixed a day, and without notice.

Point 4. The award was void on the face of it, and did not agree with the allegations in the declaration.

The declaration was, that by the submission the award was to be "ready to be delivered," [see p. 2, lines 26 to 29.] without alleging any *subsequent* time. It, therefore, means immediately.

Is it said, annexing the submissions to the declaration cures that? I answer, that it makes it worse.

1. If taken together they contradict each other, and the whole declaration is void for uncertainty.

2. If submission taken alone, it says the award was to be
10 "ready to be delivered to the said parties, or such one of them as shall desire it, by the first day of next." The declaration has undertaken to state the legal effect of that to be, not "within a reasonable time," or the first day of the next month, or the first day of the next year, but "ready to be delivered," which means at once.

The award was not ready to be delivered "at once," or on the first day of the next month, or of the next year.

And the court cannot say on these pleadings that any other time was intended; nor decide what other time, if any, was contem-
20 *plated.*

What day was intended was material.

Roberts v. *Mariott*, 2 *Saund.* 331.

Rowsby v. *Manning*, 3 *Mad.* 331.

Point 5. The apparent meaning in the submission was the first day of the next month.

After that time the making of the award could be permitted by parol.

Billing on Award, *p.* 11 to 16, *and note i to p.* 11.

And, therefore, could be revoked by parol. And the revo-
30 cation appeared by plaintiff's own evidence to have been made before the arbitrator was sworn. If not revoked, the remedy after a parol extension was *assumpsit.*

Brown v. *Goodman*, 3 *Term R.* 592, *note b.*

Point 6. The rejection of the pleas, (2d, 3d, 4th, 5th, and 6th), was error.

Any defect in an award may be taken advantage of. If intrinsic (or on the face of the pleadings) by demurrer; if extrinsic, by a proper plea and evidence thereunder.

Watson on A., p. 246 (59 *Law Lib.* 146.)

Fisher v. *Pimbly*, 11 *East.* 188; debt on bond.

Plea—"Did not make any award."

Replication—An award made.

Rejoinder—Showing that the award was for matters not included in the submission.

Lord Ellenborough, C. J.—"There was no legal and valid award under the submission, which is the same as no award."

Le Blanc, J.—"The award cannot be maintained, as it was made of matters *not submitted* to the arbitrators." 10

Bayley, J.—"A plea of no award, means no award according to the submission."

Dresser v. *Stansfield*, 14 *Messon & Welsby, p.* 823. *Debt on an award.*

This case, and the preceding one, show that the defects appearing *on the face* of the submission and award may be taken advantage of under theplea of "no award," and that a special plea of such defects, so appearing, would be bad as amounting to the plea of the general issue—no award.

But, in the case of *Gisborne* v. *Hart*, 5 *Messon & Welsby*, 20 *p.* 58, *Lord Abinger, C. B.*, says, "The award may, however, be made bad by evidence *dehors* tendered on the part of those impeaching it, *in the same manner as it would be competent for them to do on applying to have it set aside.*"

"It used to be the practice under the old form of pleading, when an award, good on the face of it, was pleaded, to reply specially matter *dehors* the award, which went to nullify it."

In the present case we adopted this "old form of pleading," and the court ought to have received the pleas under the agreement made, and allowed proof of the matters con- 30 tained in them.

Mitchell v. *Staveley*, 16 *East., p.* 58 *and* 67. Debt on bond.

7th Plea—That all matters in difference were submitted, and that as to one of the matters in difference the award was silent. On demurrer the plea was held good.

Counsel in this case urged the doctrine that relief could only be had in equity, or by application to set aside the award, but without success.

Harker v. *Hough*, 1 *Halst. R.* 428, A. D. 1802, debt on bond,

Plea. Award illegal because arbitrators did not decide on all matters submitted and brought before them. Held good.

Point 7. The extrinsic evidence offered, (case, pp. 31, 32, and 33,) ought to have been admitted.

It was not to contradict the submission, but to show *what suit—what fees* were included in the submission, and in this way apply the submission, and to show what suits were in controversy.

Evidence is admissible to explain an ambiguity in a sub-
10 mission or an award.

Billing on Awards p. 20 (51 *Law. Lib.* 25.)

Or, to apply the submission to the subject matter.

Veghte v. *Hoagland*, 5 *Dutch.* 132.

Or, that award is founded on an erroneous *reason*, and may show that reason by parol.

Kent v. *Elstot and al.*, 3 *East.* 20.

The evidence offered maintained the 2d plea, (the 1st additional plea) that no award was made "of and concerning the premises."

20 It was evidence under the plea of *nil debit*, on which issue had been joined. This plea put in issue every material fact.

Rawlins v. *Dawers*, 5 *Esp.* 38.